IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

M.F.A.No.17 of 2003(A)

I.C.NO.66/2000 OF THE EMPLOYEES' INSURANCE COURT, PALAKKAD

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APPELLANT: OPPOSITE PARTY:-

THE REGIONAL DIRECTOR,
E.S.I.CORPORATION,
PANCHADEEP BHAVAN,
ROUND NORTH, THRISSUR.

BY ADV. SRI.T.V.AJAYAKUMAR

RESPONDENT: APPLICANT:-

ARUN GRANITES, GURUVAYOOR ROAD,
POOMKUNNAM, THRISSUR.

BY ADV. SRI.P.RAMAKRISHNAN.

THIS MISCELLANEOUS FIRST APPEAL HAVING BEEN FINALLY HEARD ON 10/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

K.Padmanabhan Nair,J.

M.F.A.No.17 of 2003-A

Dated, this the 10th day of April, 2007

JUDGMENT

The Regional Director of Employees' State Insurance Corporation is challenging an order passed by the Insurance Court, Palakkad by which it had allowed an application filed by the respondent.

2. The Inspector of the appellant conducted inspection and reported that the establishment of the respondent was one liable to be covered under the Employees State Insurance Act as it was employing more than ten persons and it was using power. A demand was made by the appellant for contribution. Challenging that demand, the respondent filed I.C.No.66 of 2000 before the Employees' Insurance Court. The evidence adduced shows that though there are ten employees, one of them is none other than a partner of employer firm. The Insurance Court held that a partner of a partnership firm cannot be treated as an employee of that firm and if he is excluded, there was only nine employees and hence respondent was not liable to pay contribution. Challenging that decision, this appeal is filed.

3. In **Regional Director, E.S.I.C.** v. **Ramanuja Match Industries** [(1985) 1 SCC 218], the Supreme Court has held that a partner cannot be an employee of the firm. The decision of this Court was also referred to and found that a partner of a firm cannot be its employee. At this stage, the learned counsel appearing for the appellant has raised a contention that there was no pleading to that effect. It is true that it was not specifically pleaded. But, the evidence on record clearly proves that one of the ten employees was a partner of the firm. I am of the view that it is not necessary to insist for strict pleadings in a case of this nature. The learned counsel appearing for the appellant has also relied on a later decision of the apex Court reported in **E.S.I.Corporation** v. **Apex Engineering (P) Ltd**. [1998 (1) KLT SN 40, Case No.36]. But, that was a case of a Private Limited Company. The Supreme Court considered the position of a Managing Director of an incorporated Company, who is also a Director and held that there can be dual capacity. It was held that one and the same person can be Director as well as employee also. The principles laid down in that case is not applicable to the facts of this case. Managing Director and the Company are separate legal persons, but a partner and a

partnership firm have no separate legal existence. So, I am of the view that the finding of the Insurance Court that the respondent is not liable to be covered under the Act is only to be upheld.

There is no merit in this appeal and the same is dismissed.

K.Padmanabhan Nair
Judge

vku/-